

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

---

In re	:	
	:	
THE HAMMOCKS, LLC d/b/a	:	Case No. 09-10332
Richmond Hill Inn,	:	Chapter 11
	:	
Debtor.	:	
	:	

---

**DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND  
STATEMENT OF ISSUES TO BE PRESENTED**

NOW COMES Harleysville Mutual Insurance Company, by and through counsel, pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure and Local Rule 8006-1, and hereby designates the following items to be included in the Record on Appeal and hereby submits a statement of issues to be presented as follows:

**DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

1. **(Docket # 1)** -- Debtor/Debtor-in-Possession's Voluntary Petition under Chapter 11 filed March 25, 2009, consisting of pages 1 through 52.
2. **(Docket # 10)** – Debtor/Debtor-in-Possession's *Amended* Voluntary Petition under Chapter 11 filed April 14, 2009, consisting of pages 1 through 3.
3. **(Docket # 11)** – Debtor/Debtor-in-Possession's *Amended* Schedule G – Executory Contracts and Unexpired Leases filed April 14, 2009, consisting of pages 1 through 2.
4. **(Docket # 14)** – Application to Employ Professional Retain Special Counsel filed April 27, 2009, consisting of pages 1 through 3.
5. **(Docket # 31)** – Order Authorizing Employment of Professional/Special Counsel filed May 11, 2009, consisting of pages 1 through 2.

6. **(Docket # 35)** – Notice of Removal of State Court Action to Bankruptcy Court filed May 18, 2009, consisting of pages 1 through 5.
7. **(Docket # 35-1)** – Adversary Cover Sheet filed May 18, 2009, consisting of pages 1 through 2.
8. **(Docket # 35-2)** – Process and Pleadings of Civil Action filed contemporaneously with Notice of Removal on May 18, 2009, consisting of pages 1 through 22.
9. **(Docket # 35-3)** – Process and Pleadings of Civil Action filed contemporaneously with Notice of Removal on May 18, 2009, consisting of pages 1 through 26.
10. **(Docket # 35-4)** – Process and Pleadings of Civil Action filed contemporaneously with Notice of Removal on May 18, 2009, consisting of pages 1 through 10.
11. **(Docket # 35-5)** – Process and Pleadings of Civil Action filed contemporaneously with Notice of Removal on May 18, 2009, consisting of pages 1 through 11.
12. **(Docket # 43)** – Plaintiff's Motion for Remand of State Court Action filed June 17, 2009, consisting of pages 1 through 3.
13. **(Docket # 44)** – Plaintiffs' Memorandum in Support of Motion to Remand filed June 17, 2009, consisting of pages 1 through 7.
14. **(Docket # 49)** – Order Authorizing Special Counsel filed June 25, 2009, consisting of pages 1 through 3.
15. **(Docket # 56)** – Order (Remand) filed July 13, 2009, consisting of page 1.
16. **(Docket #'s 68; and 68-1 through 68-34)** – Motion of Harleysville Mutual Insurance Company for Relief from Automatic Stay filed October 5, 2009, consisting of pages 1 through 9 and all Exhibits and attachments to such Motion.

17. **(Docket # 72)** – Debtor/Debtor-in-Possession’s response to Motion of Harleysville Mutual Insurance Company for Relief from Automatic Stay filed October 19, 2009, consisting of pages 1 through 3.

18. **(Docket # 73)** – Motion to Admit Counsel *Pro Hac Vice* filed October 19, 2009, consisting of pages 1 through 4.

19. **(Docket # 77)** – Order for Admission of Michael R. Nelson and Douglas Y. Christian *Pro Hac Vice* filed October 22, 2009, consisting of page 1.

20. **(Docket # 82)** – Order Denying Relief from Stay filed October 28, 2009, consisting of pages 1 through 3.

21. Transcript of the Hearing on Motion of Harleysville Mutual Insurance Company for Relief from Automatic Stay conducted October 21, 2009, before the Honorable George R. Hodges – written request for the transcript is being filed contemporaneous with this Designation of Items to be Included in Record on Appeal and such request has also been sent to Court Reporter Patricia Basham with whom arrangement for payment of the transcript has been made).

22. **(Docket # 86)** – Notice of Appeal filed November 6, 2009, consisting of pages 1 through 4.

23. **(Docket # 87)** – Appellant’s Election that Appeal be heard by The United States District Court for the Western District of North Carolina filed November 6, 2009, consisting of pages 1 through 3.

**STATEMENT OF ISSUES TO BE PRESENTED**

1. Did the Bankruptcy Court err in finding that Harleysville Mutual Insurance Company has demonstrated no right or appropriate reason to file the declaratory judgment action to determine the rights and obligations under a policy of insurance?
2. Did the Bankruptcy Court err in finding that the Debtor-in-Possession is the only party that can be allowed to pursue a declaration of coverage as to the fire loss at issue and that Harleysville Mutual Insurance Company's right to pursue a declaratory judgment as to coverage issues can only be raised in an answer and response to a civil action filed by the Debtor-in-Possession?
3. Did the Bankruptcy Court err in concluding as a matter of law that the Relief from Stay request of Harleysville Mutual Insurance Company is not appropriate under 11 USC §362?
4. Did the Bankruptcy Court err in failing to conclude as a matter of law that Harleysville Mutual Insurance Company's declaratory judgment action is a non-core proceeding that can and should be pursued outside of the bankruptcy proceeding and specifically in the United States District Court for the Western District of North Carolina as requested by Harleysville Mutual Insurance Company?
5. Did the Bankruptcy Court err in concluding as a matter of law that judicial economy and efficiency dictate that only one civil action should be filed in this matter and that it should be filed by Debtor-in-Possession as plaintiff with Harleysville Mutual Insurance Company as defendant?
6. Did the Bankruptcy Court err in staying the right of Harleysville Mutual Insurance Company to file its declaratory judgment action in the United States District Court for

the Western District of North Carolina until at least January 20, 2010, to allow the Debtor-in-Possession to file a civil action against Harleysville Mutual Insurance Company?

7. Did the Bankruptcy Court err in denying the Motion of Harleysville Mutual Insurance Company for Relief from the Automatic Stay to Initiate an Action for Declaratory Judgment in the United States District Court for the Western District of North Carolina?

This the 13<sup>TH</sup> day of November, 2009.

/s/ Brady A. Yntema  
David L. Brown  
N.C. State Bar No. 18942  
dbrown@pckb-law.com  
Brady A. Yntema  
N.C. State Bar No. 25771  
byntema@pckb-law.com  
PINTO COATES KYRE & BROWN, PLLC  
3203 Brassfield Road  
Greensboro, NC 27410  
Telephone: 336.282.8848  
Facsimile: 336.282.8409

Michael R. Nelson  
P.A. State Bar No. 65679  
NELSON, LEVINE, de LUCA & HORST  
518 East Township Line Rd.  
Suite 300  
Blue Bell, PA 19422  
Telephone: (215) 358-5100

Douglas Y. Christian  
P.A. State Bar No. 41934  
BALLARD SPAHR, LLP  
1735 Market Street, 51<sup>ST</sup> Floor  
Philadelphia, PA 19103-7599  
Telephone: (215) 358-5100

*Attorneys for Harleysville Mutual Insurance Company*

**CERTIFICATE OF SERVICE**

The undersigned certifies that the pleading(s) or paper(s) to which this Certificate is affixed was served upon the party(s) to this action listed below by depositing a copy of the same, enclosed in a first-class postage, properly addressed wrapper, in a Post Office or official depository under the exclusive care and custody of the United States Postal Service and/or by means of the Electronic Filing System of the Bankruptcy Court on November 13, 2009.

**By means of the Electronic Filing System of the Bankruptcy Court as follows:**

Daniel E. Hitchcock: [dhitchcock@adamsfirm.com](mailto:dhitchcock@adamsfirm.com)

Marjorie Rowe Mann: mmann@roberts-stevens; [dpooler@roberts-stevens.com](mailto:dpooler@roberts-stevens.com)

Joy G. McIver: [jmciver@adamsfirm.com](mailto:jmciver@adamsfirm.com)

U.S. Bankruptcy Administrator: [alexandria\\_a\\_kenny@ncwba.uscourts.gov](mailto:alexandria_a_kenny@ncwba.uscourts.gov);  
[ba\\_desk@ncwba.uscourts.gov](mailto:ba_desk@ncwba.uscourts.gov)

David G. Gray: [judyhj@bellsouth.net](mailto:judyhj@bellsouth.net)

Albert L. Sneed, Jr.: [asneed@vwlawfirm.com](mailto:asneed@vwlawfirm.com)

**By first-class mail on the following:**

Ronald K. Payne  
LONG, PARKER, WARREN,  
ANDERSON & PAYNE  
P.O. Box 7216  
Asheville, NC 28801

Jerome W. Cook  
McDONALD HOPKINS, LLC  
600 Superior Ave, East  
Suite 600  
Cleveland, OH 44114

George Ward Hendon  
ADAMS HENDON CARSON CROW & SAENGER  
Post Office Box 2714  
Asheville, NC 28802

This the 13<sup>TH</sup> day of November, 2009.

/s/ Brady A. Yntema  
Brady A. Yntema  
N.C. State Bar No. 25771  
byntema@pckb-law.com  
PINTO COATES KYRE & BROWN, PLLC  
3203 Brassfield Road  
Greensboro, NC 27410  
Telephone: 336.282.8848  
Facsimile: 336.282.8409  
*Attorney for Harleysville Mutual Insurance  
Company*